

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

## **MEMORANDUM AND ORDER**

This matter is before the Court on defendant Apex Oil Company's motion to dismiss National Union Fire Insurance Company's cross-claim. National Union Fire Insurance Company has responded, and the matter is fully briefed.

In a separate Memorandum and Order entered this same date, the Court dismissed plaintiff Royal Indemnity Company's complaint against Apex Oil Company ("Apex"). National Union Fire Insurance Company of Pittsburgh, PA ("National Union") filed a cross-claim against Apex, seeking declaratory judgment on aspects of an insurance policy it issued to Apex or its predecessors. Apex now moves to dismiss on the same grounds presented in its motion to dismiss Royal Indemnity Company's complaint. For the reasons discussed in the separate Memorandum and Order, the Court will dismiss National Union's cross-claim.

Briefly, however, National Union raises a slightly different argument touching on whether the Illinois state court action is parallel to the federal case filed here. It claims that two

defendant insurers in the Illinois state court action have filed motions to dismiss, and if those are granted, the actions will no longer be parallel. The Court will dismiss the cross-claim without prejudice, so that if the parties wish to re-evaluate the likelihood of success on another federal declaratory judgment suit after a potential change of the state suit parties, they may do so.

Finally, National Union claims that choice of law considerations favor "proceeding in a Missouri court." Mem. in Opp. at 8. It argues that Missouri law should apply to the matter currently before the Illinois court. The choice of law issue National Union posits is irrelevant to the abstention analysis.

**IT IS HEREBY ORDERED** that defendant Apex Oil Company's motion [#57] to dismiss National Union Fire Insurance Company's cross-claim is **granted**.

**IT IS FURTHER ORDERED** that National Union's cross-claim is **dismissed without prejudice**. An order of dismissal in accordance with this memorandum will be entered this same date.



CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of August, 2006.